

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals  
for the Second Circuit, held at the Daniel Patrick Moynihan  
United States Courthouse, 500 Pearl Street, in the City of  
New York, on the 1<sup>st</sup> day of April, two thousand eight.

**PRESENT:**

HON. RALPH K. WINTER,  
HON. GUIDO CALABRESI,  
HON. ROSEMARY S. POOLER,  
*Circuit Judges.*

YOUNG YUN CHEN, a.k.a. Yun Chen Young,  
*Petitioner,*

v.

MICHAEL B. MUKASEY,<sup>1</sup>  
UNITED STATES ATTORNEY GENERAL,  
*Respondent.*

07-2293-ag  
NAC

<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

1     **FOR PETITIONER:**             **Thomas V. Massucci, New York, New**  
2                                     **York.**

3  
4     **FOR RESPONDENT:**           **Jeffrey S. Bucholtz, Acting**  
5                                     **Assistant Attorney General, Civil**  
6                                     **Division; David E. Dauenhimer,**  
7                                     **Senior Litigation Counsel; Sharon M.**  
8                                     **Clay, Trial Attorney, Office of**  
9                                     **Immigration Litigation, U.S.**  
10                                    **Department of Justice, Washington,**  
11                                    **D.C.**

12  
13             UPON DUE CONSIDERATION of this petition for review of a  
14     decision of the Board of Immigration Appeals ("BIA"), it is  
15     hereby ORDERED, ADJUDGED, AND DECREED, that the petition for  
16     review is DENIED.

17             Young Yun Chen, a native and citizen of the People's  
18     Republic of China, seeks review of an April 30, 2007 order  
19     of the BIA affirming the August 23, 2005 decision of  
20     Immigration Judge ("IJ") Elizabeth A. Lamb, denying his  
21     application for asylum, withholding of removal, and relief  
22     under the Convention Against Torture ("CAT"). *In re Young*  
23     *Yun Chen*, No. A79 425 055 (B.I.A. Apr. 30, 2007), *aff'g* No.  
24     A79 425 055 (Immig. Ct. N.Y. City Aug. 23, 2005). We assume  
25     the parties' familiarity with the underlying facts and  
26     procedural history of this case.

27             After a hearing on the merits, the IJ denied Chen  
28     relief, finding him not credible. The BIA affirmed and Chen

1     appealed to this Court. While Chen's appeal was pending, we  
2     issued our decision in *Shi Liang Lin v. U.S. Dep't of*  
3     *Justice*, 494 F.3d 296 (2d Cir.2007) (en banc), a decision  
4     fatal to his petition. In *Shi Liang Lin*, we held that 8  
5     U.S.C. § 1101(a)(42), the statute on which Chen relies, does  
6     not apply to a spouse such as he, who has not  
7     "demonstrate[d] 'other resistance to a coercive population  
8     control program' or 'a well founded fear that he . . . wukk  
9     be . . . subject to persecution for such . . . resistance .  
10    . . . ." 494 F.3d at 314 (alterations in original) (quoting  
11    8 U.S.C. § 1101(a)(42)). We are obligated to apply this  
12    intervening precedent. See, e.g., *Gui Yin Liu v. INS*, 508  
13    F.3d 716, 723 (2d Cir.2007) (applying intervening precedent  
14    of *Shi Liang Lin* to petitioner's claims).

15       Chen argues that, in *Shi Liang Lin*, we "did not make  
16    any finding concerning whether a forced abortion of a  
17    person's unborn child could be a persecutory act," and if  
18    such an act constitutes persecution, "then the fact that  
19    this would occur during resistance to a coercive population  
20    control program would apply to male asylum applicants."  
21    Contrary to Chen's argument, in *Shi Liang Lin* we explicitly  
22    held that the definition of "refugee" under 8 U.S.C.

1   § 1101(a)(42) does not extend automatically to partners  
2   (legally related or otherwise) of individuals who have been  
3   forcibly sterilized or forced to have an abortion. 494 F.3d  
4   at 314 (affirming, in part, *In re S-L-L-*, 24 I. & N. Dec. 1,  
5   8-11 (B.I.A. 2006)). We also held in *Shi Liang Lin* that an  
6   alien may establish eligibility for asylum by demonstrating  
7   past persecution based on his or her own "other resistance"  
8   to a coercive population control program or a well-founded  
9   fear that he or she will be subjected to persecution for  
10   such "resistance." *Id.* Because Chen fails to allege that  
11   he engaged in any resistance, he is unable to establish his  
12   eligibility for asylum under 8 U.S.C. § 1101(a)(42). *Id.*<sup>2</sup>

13       Because Chen is unable to meet the standard for asylum,  
14   he is necessarily unable to meet the higher standard  
15   required to succeed on his claim for withholding of removal,  
16   which rested on the same factual predicate. *See Paul v.*  
17   *Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006). Last, because  
18   Chen failed to challenge the denial of his CAT claim in his  
19   brief to this Court, we deem any such argument waived. *See*

---

<sup>2</sup> Because Chen does not qualify for asylum as a matter of law, we need not address his challenge to the IJ's adverse credibility finding or his related claims that the IJ violated his due process rights and that the BIA engaged in improper fact-finding.

1     *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 545 n.7 (2d Cir.  
2     2005) (stating that we consider waived and normally will not  
3     address issues that are not sufficiently argued in the  
4     briefs).

5             For the foregoing reasons, the petition for review is  
6     DENIED. The pending motion for a stay of removal in this  
7     petition is DISMISSED as moot.

8                     FOR THE COURT:  
9                     Catherine O'Hagan Wolfe, Clerk

10                    By: \_\_\_\_\_  
11